

In The
Supreme Court of the United States
October Term, 1996

ALLENTOWN MACK SALES AND SERVICE, INC.,
Petitioner,
v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The District Of Columbia Circuit

JOINT APPENDIX

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**Petition For Certiorari Filed November 19, 1996
Certiorari Granted March 3, 1997**

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* Appended to the Petition for Certiorari are the following: May 21, 1996 Decision of the U.S. Court of Appeals for the District of Columbia Circuit from which this Appeal was taken (Appendix A); April 12, 1995 Decision of the National Labor Relations Board with Decision of Administrative Law Judge appended thereto (Appendix B); September 13, 1996 Orders of the U.S. Court of Appeals for the District of Columbia denying Petitioner's Suggestion for Rehearing En Banc (Appendix C) and Petition for Rehearing (Appendix D); and October 24, 1996 Order of the U.S. Court of Appeals for the District of Columbia Circuit granting Petitioner's Motion for Stay of Mandate (Appendix D).

**CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES**

**In The Matter of: Allentown Mack Sales and Service, Inc.
Board Case No. 4-CA-19516**

Date	Document
01/22/91	Charge
02/14/91	First Amended Complaint
03/27/91	Complaint and Notice of Hearing
04/09/01	Answer
10/15/91	Hearing Opened
10/16/91	Hearing Closed
01/24/92	Administrative Law Judge's Decision
02/20/92	Respondent's Exceptions
03/23/92	General Counsel's Cross-Exceptions
03/23/92	Charging Party's Cross-Exceptions
04/12/95	Board's Decision and Order
05/25/95	Petition for Review
06/08/95	Cross-Application for Enforcement
05/21/96	Decision of the Court of Appeals
05/21/96	Judgment of the Court of Appeals
07/01/96	Petition for Rehearing Filed
09/13/96	Petition for Rehearing Denied
09/18/96	Motion to Stay Issuance of Mandate Filed
10/24/96	Motion to Stay Issuance of Mandate Granted
11/19/96	Petition for Writ of Certiorari Filed
03/03/97	Petition for Writ of Certiorari Granted

[p. 1] BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:
ALLENTOWN MACK SALES
& SERVICE, INC.
and
LOCAL LODGE #724,
INTERNATIONAL
ASSOCIATION OF
MACHINISTS & AEROSPACE
WORKERS, AFL-CIO.

Case No. 4-CA-19516

The above-entitled matter came on for Hearing, pursuant to Notice, before WALLACE NATIONS, Administrative Law Judge, at 615 Chestnut Street, Courtroom No. 1, Philadelphia, Pennsylvania, on Tuesday, October 15, 1991, commencing at 10:00 a.m.

APPEARANCES:

On Behalf of General Counsel:

RICHARD HELLER, ESQUIRE
National Labor Relations Board
615 Chestnut Street
Philadelphia, PA 19106

On Behalf of Charging Party:

DENNIS P. WALSH, ESQUIRE
Spear, Wilderman, Borish, Endy, Browning & Spear
Suite 1500, Atlantic Building
260 South Broad Street
Philadelphia, PA 19102

On Behalf of the Respondent/Employer:

GEORGE S. FLINT, ESQUIRE
Jackson & Nash
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New York, NY 10017

<u>Witness</u>	<u>[p. 2] INDEX</u>			
	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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JOHN HORAN	33	44	45, 47	
MICHAEL RIDGICK	48	56	59	60
RONALD MOHR	61, 67	67	70	
ELLSWORTH KRATZER	71, 75	75	77	77
ROBERT J. DWYER	78	98	115, 125	129

EXHIBITS

	<u>Identified</u>	<u>Received</u>
<u>General Counsel's Exhibits</u>		
No. 1	4	4
No. 2	12	13
No. 3	14	16
No. 4	19	19
No. 5	19	20
No. 6	20	21
No. 7A	21	22
No. 7B	21	22
No. 8	22	22
No. 9	41	44
No. 10	80	87

[p. 3] PROCEEDINGS

JUDGE NATIONS: This is a formal proceeding before the National Labor Relations Board in the matter of Allentown Mack Sales and Service, Inc. and Local Lodge 724, International Association of Machinists and Aerospace Workers, AFL-CIO. It's Board Case No. 4-CA-19516.

My name is Wallace Nations; I'm the Administrative Law Judge with the Agency assigned to the proceeding.

May I have the appearances of the parties' representatives, beginning first with the counsel for General Counsel.

MR. HELLER: For General Counsel, Richard P. Heller, H-e-l-l-e-r. NLRB, 615 Chestnut Street, 7th Floor, Philadelphia, Pennsylvania 19106.

JUDGE NATIONS: The representation for the Charging Party?

MR. WALSH: Yes. For the Charging Party, Dennis P. Walsh, Esquire, Spear, Wilderman, Borish, Endy, Browning & Spear. 260 South Broad Street, Suite 1500, Philadelphia 19102.

JUDGE NATIONS: And for the Respondent Employer?

MR. FLINT: George S. Flint, Jackson & Nash. 330 Madison Avenue, New York, New York 10017.

* * *

[p. 11] MICHAEL J. WALSH,

a Witness herein, called for examination by counsel for General Counsel, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HELLER:

Q. Mr. Walsh, by whom are you employed?

A. Local 724, the International Association of Machinists and Aerospace Workers.

Q. And what is your job?

A. Business Representative.

Q. How long have you held that position?

A. Since 10/1/89.

Q. Can you generally describe your duties and responsibilities?

A. Generally, I negotiate Collective Bargaining Agreements, process grievances, arbitrations, and generally represent the members of Local 724.

Q. Did the Union represent employees of Mack Trucks, Inc. at its facility at Routes 309 and 22 in Allentown, Pennsylvania?

[p. 12] A. Yes, they did.

Q. During what time period?

A. Local 724 started to represent them around 1973.

* * *

[p. 23] Q. Since Allentown Mack began operating, do you know whether any of its employees have paid dues to the Union?

A. Yes, they have.

Q. Approximately how many, if you know?

A. Approximately 23.

Q. And were those individuals who were part of the bargaining unit at Mack?

A. Yes, they were.

* * *

[p. 24] Q. The 23 employees who have paid dues to the Union, are they currently paying dues to the Union, all 23?

[p. 25] A. Yes, they are.

* * *

[p. 33] JOHN HORAN,
a Witness herein, called for examination by counsel for General Counsel, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HELLER:

Q. Could you spell your last name, please, for the [p. 34] record?

A. H-o-r-a-n.

Q. Are you testifying pursuant to a subpoena today?

A. Yes, I am.

Q. Who do you work for?

A. Allentown Mack Sales and Service.

Q. Where?

A. In Allentown.

Q. Okay. Could you give the address, please?

A. 1407 Bulldog Drive.

Q. And do you know what route that's on?

A. At 22 and 309, roughly.

Q. How long have you worked for Allentown Mack?

A. Less than a year.

Q. When did you start?

A. In January of 1991.

Q. And who was your previous employer?

A. Mack Trucks, Incorporated.

Q. Where?

A. Same location.

Q. How long did you work for Mack Trucks, Incorporated?

A. A little under 27 years; 26 years, ten months.

Q. And what is your current job title?

A. I'm a lead man mechanic in the unit rebuild room.

* * *

[p. 37] Q. Which one is your immediate supervisor?

A. Roy Christ is my immediate supervisor.

Q. To your knowledge, who are Allentown Mack's other supervisors and management officials?

A. David Worth is a service manager, Rick Walsh is office manager, Mr. Dwyer is the owner, and James Hamershock is the parts manager.

Q. Okay. Which of those individuals were supervisors or officials of Mack Trucks?

A. All but James Hamershock.

Q. Do you know what positions they held with Mack Trucks?

A. Mr. Dwyer was branch manager, David Worth was service manager, Rick Walsh was office manager.

* * *

[p. 61] RONALD MOHR,

a Witness herein, called for examination by counsel for General Counsel, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HELLER:

Q. Can you please state your name and spell your last name for the record?

A. Ronald Mohr, M-o-h-r.

Q. Mr. Mohr, are you testifying pursuant to a subpoena?

A. Yes.

Q. Who do you work for?

A. Allentown Mack.

Q. How long have you worked for them?

A. Since January.

Q. Of what year?

A. '91.

Q. And who did you work for previously?

A. Mack Trucks, Allentown Branch.

Q. For how long?

[p. 62] A. Twenty-two years.

Q. What is your current job title?

A. Classified A mechanic.

Q. What was it for Mack Trucks?

A. Classified A mechanic.

* * *

[p. 64] Q. What process did you go through to be hired by Allentown Mack?

A. I was called in to Dave Worth's office, and he told me what he had to offer, and he told me it would be a non-union shop. And then he asked me - told me the wages and all that and asked me if I wanted the job.

[p. 65] Q. And how did you respond?

A. I said: Yes. I said: I'll work for you.

Q. Okay. Was that when you were hired?

A. Yes, I would think -

Q. Was there any other part of the process to get hired or was that it?

A. No.

Q. Have you had any discussions with Robert Dwyer regarding the Union?

A. Yes.

Q. When?

A. I'm not sure of the day. It was in December, I would say.

Q. Of what year?

A. '90.

Q. And where did the conversation take place?

A. Up in Bob Dwyer's office.

Q. Who else was present, if anyone?

A. I don't recall. It was just me and Bob.

Q. And how did the - how did the conversation get started?

A. He asked me how things were going in the shop.

Q. Before that, how did you come to be in his office?

A. They called me from the service desk.

Q. Okay.

[p. 66] A. I was on the floor and they told me to go up to Bob Dwyer's office.

Q. Okay. And now tell about the conversation.

A. And then when I got up there, we sat down and he asked me how things are going out in the shop. So I told him all right. And he asked me about the Union.

Q. What did he say? How did he ask?

A. He asked me how I felt about the Union. I told him I could work with the Union or I could work without the Union; I'm there to do my job.

Q. And how did he respond to that?

A. Well, he came and he said he would work either way, with the Union or without. You know, he could work - it would be up to the men.

Q. And did he ask any other questions?

A. No.

Q. Okay. Did he ask about any other employees?

A. I told him I couldn't -

Q. Did he ask?

A. Yes.

Q. What did he ask?

A. He asked how the other men felt about the Union. I said I couldn't answer for them.

* * *

[p. 67] DIRECT EXAMINATION

BY MR. WALSH:

Q. Just one question on that conversation that you had with Mr. Dwyer. You said it was in December of 1990. Was that before or after Allentown Mack took over? Do you recall?

A. I would say it was before Allentown Mack.

* * *

[p. 78] ROBERT J. DWYER,

a Witness herein, called for examination by counsel for General Counsel, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HELLER:

Q. Mr. Dwyer, what's your position with Allentown Mack?

A. I'm President.

Q. And you're also a partial owner of the company?

A. That is correct, yes, I am.

[p. 79] MR. HELLER: Your Honor, I request permission to examine Mr. Dwyer as an adverse witness.

JUDGE NATIONS: I think that's fair.

BY MR. HELLER:

Q. What are your duties and responsibilities as President of Allentown Mack?

A. I am President of Allentown Mack Sales and Services, responsible for the overall day-to-day activities.

Q. Are you familiar with all aspects of the company?

A. Yes.

Q. What position, if any, did you hold with Mack Trucks, Incorporated?

A. I was branch manager, most recently, with Mack Trucks, Incorporated, Allentown Branch.

Q. During what period of time?

A. I was branch manager from June 1985 until December of 1991 (sic).

Q. Did you work at -

A. Excuse me, I made a mistake. 1990.

* * *

[p. 100] Q. Under Mack Trucks, Inc., while you were general manager in the most recent years, what was the approximate volume of sales and other revenues - annual sales and revenues?

A. Well, going back to 1988, the sales of the Allentown Branch were a little under \$90 million. And the actual deliveries, physical deliveries, were a little under 2400 vehicles.

1989 was very similar, it was 90 plus million, I think 91, 92 million. The actual unit sales for Mack Trucks, Allentown Branch, was over 2600 that year, I believe.

And 1990, I don't have the records because it's - they're not public. But it was very high.

Q. And how about Allentown Mack Sales and Service, what are the estimated revenues for the current year?

A. Estimated revenues for Allentown Mack Sales and Service are 9 million.

* * *

[p. 112] Q. If you know, what were the revenues of Mack Trucks, Inc. for the most recent years that you know of?

* * *

THE WITNESS: 1990 - the information is not available. In previous years, 1989, they had sales of \$1.8 billion worldwide. 19 - it was in 1988, the year before that, it was over \$2.2 billion sales for Mack Trucks, Incorporated.

* * *

[p. 117] Q. You testified that Allentown Mack had 32 mechanics, 1 janitor, 1 shop clerk and 11 parts employees; correct?

A. Approximately.

Q. And Allentown Mack has 23 mechanics and 7 parts employees; correct?

A. At the time we started.

Q. Okay. At the time you started - and a janitor, too, correct?

A. Yes, and a janitor.

* * *

[p. 129] RECROSS EXAMINATION

BY MR. FLINT:

Q. Mr. Dwyer, Mr. Heller asked you whether truck sales were slow in 1991. Were they slow in 1990?

A. Yes, they were.

Q. Has there been a recession in the trucking industry for some period of time?

A. Yes, there has been.

Q. About how long has that been going on?

A. Quite a few years.

* * *

[p. 200] BEFORE THE NATIONAL
LABOR RELATIONS BOARD

	x
In the matter of:	:
ALLEGHENY MACK SALES	:
& SERVICE, INC.,	:
and	:
LOCAL LODGE #724,	:
INTERNATIONAL ASSOCIATION	:
OF MACHINISTS AND	:
AEROSPACE WORKERS, AFL-CIO	:

The above-entitled matter came on for hearing pursuant to Notice before Wallace H. Nations, Administrative Law Judge, at 615 Chestnut Street, Courtroom One, Philadelphia, Pennsylvania, Wednesday, October 16, 1991, at 9:30 a.m.

APPEARANCES:

On Behalf of Respondent:

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[p. 201] APPEARANCES (Continued):

On Behalf of Charging Party:

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On Behalf of Counsel for the General Counsel:

RICHARD HELLER, Esquire
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National Labor Relations Board
615 Chestnut Street
Philadelphia, Pennsylvania 19106

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VOIR

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS	DIRE	VOIR
R. Dwyer	211	264	302		224	
D. Worth	304	314				
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R. Dwyer	341					
M. Walsh	344	347				348
M. Ridgick	352					

[p. 203] EXHIBITS

NUMBER	IDENTIFIED	RECEIVED	REJECTED
GC-11	336	343	
GC-12	346	349	
GC-13	346	349	
GC-14	346	349	
GC-15	346	349	
GC-16	346	349	
R-1	214	216	
R-2	217	218	
R-3	223	225	
R-4	249	250	
R-5	251		
R-6	253	254	
R-7	254	256	
CP-1	224	225	

[p. 204] PROCEEDINGS

(Time Noted: 9:30 a.m.)

JUDGE NATIONS: Let's go on the record.

* * *

[p. 211] ROBERT DWYER

was called as a witness and, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. FLINT:

Q Mr. Dwyer, will you state for the record your name, your business address, and your title, and general responsibilities?

A Robert Dwyer. My business address is 1407 Bulldog Drive, Allentown, Pennsylvania 18104. My title is President. My business is Allentown Mack Sales and Service. My responsibility is for the overall function of the distributorship.

[p. 212] Q Will you state your educational background, give simply the highest degree you have received?

A Bachelor of Science, University of Maryland, 1978, College Park, Maryland.

Q Any additional technical or other courses since then?

A No.

Q Would you give your employment history, particularly as it relates to Mack Trucks, Inc.?

A 1978, I was employed by Mack Trucks as a trainee in Somerville, New Jersey.

In approximately 1981, I was transferred down to the Philadelphia Branch of Mack Trucks where I was a retail sales representative.

In approximately 1983, I was promoted to a District Manager Mid-Atlantic Sales for Mack Trucks, Incorporated, covering the five-state area calling on Mack dealers.

In 1985, I was promoted to Branch Manager of the Allentown Branch of Mack Trucks, Incorporated.

And, in December of 1990, I terminated my employment with Mack Trucks.

Q With Mack Trucks?

A Mack Trucks, Incorporated.

* * *

[p. 230] Q Mr. Dwyer, turning to the events leading up to your company's purchase of certain assets at the Allentown Branch, would you describe how you learned the branch would be sold, and what followed that?

A I received a phone call in May, mid-May 1990, from Holly Clayson, who is the director of branch operations. He notified me that Allentown Mack - I am sorry, Mack Trucks' Allentown Branch was going to be sold, hopefully to a private distributor.

On or about June 17th or so, I inquired information on a fax sheet from Mr. Clayson as to what would be the purchase price of the Mack Truck Allentown Branch Facility.

After I got all the fax sheet information, [p. 231] respective, we reviewed it, and notified Mack that we were interested in making a bid on the facility.

On approximately August 10th, I made a formal bid to Mack Trucks, Incorporated, on buying certain parts of the assets, and then the operation, and run that as an independent business.

On September 19th, I offered an addendum to my proposal, had to increase the bid because of competition.

I believe it was - I don't know the actual date that I received another phone call from Mack notifying me that I was the successful bidder, and that now had come the time that we had to sit down and begin negotiating the memorandum of understanding, and closing date.

* * *

[p. 236] Q Did Hamershock and Worth interview then current employees of Allentown Mack - I am sorry of Mack Truck's Allentown Branch?

A Yes, they did. In December, they interviewed Mack Truck's Allentown Branch employees.

Q Prior to these interviews, and while you were manager of the Mack Allentown Branch, did you receive from any employees any statements concerning support, or lack of support for union representation?

A Yes, I did.

Q Would you describe those statements and the circumstances under which they were given, and start [p. 237] with the earliest in your recollection?

MR. WALSH: I would object on hearsay grounds here, Your Honor.

If you would like, I would like to just briefly state an argument on that for the record. I think the content of the statement is going to be all important here. The ambiguity, certainly, of the statements under the case law is all important, and without an opportunity to cross-examine the employees who made them the contents of the statements cannot be fully and fairly litigated.

JUDGE NATIONS: Overruled.

BY MR. FLINT:

Q Mr. Dwyer, will you give the first of these statements that you recall?

A Yes. It would happen as far back, to the best of my knowledge, in '89 before the contract, the renewal of the contract in 1989.

Should I name individuals?

Q Yes.

A One individual in particular Mike Ridgick, who was the - who worked, he was a bargaining unit employee for the parts department. He came in there, and he mentioned to me, what was there that Mack Trucks had to offer the employees as compared to what the [p. 238] union was going to offer them.

There have been quite a few numbers of decertifications throughout, and he asked me what could he do. I told him that I was unable to respond to that. That we couldn't give any information, and I advised him to contact his counterparts at other Mack facilities, and get information from them.

Q Excuse me, Mr. Dwyer, when you say there have been some decertifications throughout, what did you mean, throughout what?

A Mack had quite a few factory owned facilities. There were a few of them that had decertified over the years, and I guess our employees were interested in knowing what the Mack company had to offer as compared to what the union had to offer them.

MR. WALSH: Objection and move to strike. That is speculation as to what the employees were interested in.

JUDGE NATIONS: At this state, gentlemen, this is what Mr. Ridgick said, according to what he said.

BY MR. FLINT:

Q Mr. Dwyer, anything further as to Mr. Ridgick's statement or discussion with you?

A No. Other than the fact that I think he came [p. 239] to my office twice about this, and there was no further discussion.

Q Anyone else at that time, or around that time?

A There is another statement made prior to that by Bill Wendling, who has since retired. He was a long-time Allentown Mack - Mack Truck's, Incorporated, employee, and he stated that he had wished that he would be in the management because of a better retirement package.

Q Did he say anything further, or did you respond to his statement?

A No, didn't respond to it at all.

Q At the time of the -

Were there any further statements at that time from any employees?

A Yes, there were many statements. I could take back from - I remember the one time when I was given the WARN letter to the employees, Mack made me read it to the employees and then hand it to the employees, and then have the employees kind of initial it.

Q And the WARN letter you are referring to is the -

A The one in July.

[p. 240] Q July of 1990?

A Yes.

Q After a meeting, when everybody left, Dennis Wehr, who was a parts bargaining unit employee mentioned to me that if I was elected principal of a new company that we didn't have to have a union, because we didn't need one.

Once again, I didn't respond to it at all. I just dismissed him from the room.

Q Did he explain what he meant by that in any way?

A That is all he said.

Q Was this in a private conversation with you, or in a group discussion with other employees?

A This was in a private conversation, unsolicited private conversation.

Some of the other - one member in particular, Rusty Hoffman, who is a mechanic, he works in the fire department, he was - We had discussions because when we hired him for the new company, we wanted to develop that business, the fire business, because we needed to expand that. He told me that if the new company was going to be union that he wasn't interested in working because he don't want to work in a union shop.

[p. 241] MR. WALSH: Objection, move to strike without a tying period.

JUDGE NATIONS: When did he tell you this?

THE WITNESS: Probably in December.

JUDGE NATIONS: In what year?

THE WITNESS: 1990.

I had a conversation with Ron Moore. He was shop steward at the time. I remember the conversation to be a little bit different than he said it, but I remember it to be in the shop itself, and I sat down and I did ask Ron how things were going. He was the shop steward, and we were kind of close.

He mentioned to me that with a new company that if we took a vote that the union would lose, and that it was his feeling that the guys didn't want a union.

I told him that is up to you. That is not up to me. You make the decision whether there is a union. I don't make the decision, and I will go one way or the other.

BY MR. FLINT:

Q Mr. Moore was shop steward of what department?

A Service.

Q Any other statements that were made directly [p. 242] to you?

A I remember Pete McArthur also came to me, prior to the 1989 contract, and he was also a bargaining unit employee, and was interested in decertification information. I told him that I couldn't discuss that. That it was information that he was going to have to get on his own. Once again, I recommended that he talk to the people who were his counterparts.

Q Any other direct statements to you?

A It was common, you know, unsolicited comments. I am not interested in the union.

MR. WALSH: Objection, Your Honor.

JUDGE NATIONS: Can you specify?

BY MR. FLINT:

Q During what period of time was this?

A I had his comments as soon as - as recently as Tuesday.

MR. WALSH: Objection, Your Honor, without any specifications as to who and what the comments were, it is totally irrelevant.

JUDGE NATIONS: I would also say, let's limit it to things that happened, if you can remember now

from the time it became known that you were going to acquire the assets of Mack up to the time you took that [p. 243] poll?

THE WITNESS: Your Honor, one in particular I remember although I can't give you a specific date, was Scott Murphy who was an hourly employee under the bargaining unit.

BY MR. FLINT:

Q Can you give a general date, if you can't give a specific date?

A He probably would mention it to me, you know, once a month over the last - from, I would say, since the last six months, you know, the last twelve months, probably once a month would be a comment, an unsolicited comment.

Q And what was the substance of the commenting?

A He was not for the union. He didn't like them. He didn't feel as though it was worth the dues that he was paying for the representation he was getting.

Q Any other direct comments to you?

A None that I can recall right now.

Q Did you also receive reports from your service manager, and parts manager in Allentown Mack Trucks following their interviews with prospective employees?

A Yes, I did.

[p. 244] MR. FLINT: Your Honor, we will be putting these gentlemen on as witnesses.

BY MR. FLINT:

Q Will you tell in substance what those reports included?

MR. WALSH: Objection, Your Honor, hearsay.

JUDGE NATIONS: I understand that. Overruled on the basis they are going to be put on and supply specifics.

THE WITNESS: They came back to me and told me that -

MR. WALSH: Objection, Your Honor.

I am sorry. I thought you sustained. I am sorry.

THE WITNESS: They came back and told to me that during their course of interviews, on occasion, the topic of the union's status with the new company was brought up, and that some of the interviewees, of if you want to call them applicants said that they weren't interested in the union, that they didn't think it was worth the dues, and they weren't getting anything out of it.

BY MR. FLINT:

Q Following those reports, and following your earlier, or later, direct comments, did you form any [p. 245] conclusion or opinion about the union's majority support at Allentown Mack Sales and Service?

A I guess I did.

Q What was that?

A That they did not represent the majority, the union did not.

Q At any time following the purchase of assets by Allentown Mack Sales and Service did you make any statement to the employees individually or as a group as to your preference with respect to a union?

A No.

Q To your knowledge, or in your presence, did either of your managers, your parts manager or your service manager, make any such statement?

A To my knowledge, no.

Q Following your purchase -

When did the purchase of assets close, if you recall?

A It was December 21st, 1990.

Q The purchase of assets as opposed to your commencement of business, wasn't that earlier?

A The memorandum of -

Q Of understanding.

A - of understanding, we signed it earlier than that.

[p. 246] Q But you actually closed the deal as of the 21st?

A The 21st.

Q On that date, or at any time up to January 7th, 1991, did the union request recognition of bargaining from you either orally or in writing?

A Never with Allentown Mack Sales and Service between those dates.

* * *

[p. 249] Q Mr. Dwyer, I show you Respondent's 4 for identification, which has at the top Notice.

(The document referred to above was marked Respondent's Exhibit No. 4 for identification.)

BY MR. FLINT:

Q I ask you whether you recognize that?

[p. 250] A Yes, I do.

Q What is that document?

A This is a notice that I put on the bulletin board for the stop maintenance employees, shop clerks and parts-men that Allentown Mack Sales and Service was going to conduct a poll and the date and time.

MR. FLINT: I submit this as Respondent's Exhibit 4.

JUDGE NATIONS: Any objection?

MR. HELLER: No.

MR. WALSH: No objection.

JUDGE NATIONS: Four is received into evidence.

(The document heretofore marked Respondent's Exhibit No. 4 for identification was received into evidence.)

BY MR. FLINT:

Q Mr. Dwyer -

MR. FLINT: Again, may I go off the record, Your Honor.

JUDGE NATIONS: No, let's stay on the record, if it doesn't make any difference.

MR. FLINT: This is simply to find out the location of the document that he had in his possession.

[p. 251] I need the statement you made to the employees on the ballot.

BY MR. FLINT:

Q Mr. Dwyer, on February 6, did you have a meeting of the employees, read a statement to them?

A It was on February 8th.

Q I am sorry, February 8th. You are correct.

Did you read a statement to the employees?

A Yes, I did.

Q And was that done in one or two sessions?

A Two sessions.

Q In a moment I will ask you to describe those two sessions.

First, I show you Respondent's Exhibit 5 for identification.

(The document referred to above was marked Respondent's Exhibit No. 5 for identification.)

BY MR. FLINT:

Q I ask if that refreshes your recollection as to the statement made to the employees?

A I guess it is.

Q What was the statement you made to the employees?

[p. 252] A A poll of our employees will be conducted on the supervision of Father Czaus this afternoon. the purpose of this poll is to ascertain whether the International Association of Machinists and Aerospace Workers, Local Union No. 724, actually represent the majority of the company's employees covered by the National Labor Relations Act.

We want to assure you that no reprisals will be taken against any employee regardless of how he votes, or the outcome of the poll.

The poll will be conducted by secret ballot, and only Father Czaus will see the ballots. He will simply report the results to us, and those results will be posted, and communicated to the union.

That is all I have to say about the poll. If you have any questions about the polling procedure, please ask Father Czaus after I have left the room.

Q And did you say anything further to either group of employees.

A No.

Q Did you, indeed, leave the room?

A Yes, I did.

Q Was any management employee left in the room?

A No, there was not.

* * *

[p. 256] Q Following the two groups entering the room, or being in the room without Father Czaus and yourself, [p. 257] or any management people leaving, what happened then?

A When he was completed with the poll, he tabulated the ballots privately.

Q Did he give you any of the ballots?

A No. He took all the ballots with him, and he advised us to the results.

Q Was his advice given in General Counsel 7A?

A Yes. This is what he gave me.

Q And did you do anything with that letter or statement by Father Czaus?

A I mailed it to Michael Walsh. I posted it on the bulletin board, and that was it.

* * *

[p. 268] Q You testified to certain statements that one Mike Ridgick made to you in 1989; correct?

A Correct.

Q At the time - and those referred to union benefits; correct?

[p. 269] A He questioned me in reference to decertification, and what Mack had to offer as compared to what the union had to offer.

Q Wasn't Mike your assistant parts manager in 1989?

A I don't believe he was.

Q Was he ever your assistant parts manager?

A Yes, he was.

Q Do you know the dates on that?

A I think the dates, it probably was prior to the closing for maybe a year-and-a-half.

Q So you don't know the exact dates, do you?

A No.

Q Is a year-and-a-half kind of a rough estimate?

A That is a rough estimate.

Q And then you testified to some statements by a Mr. William Wendling, is that W-e-n-d-l-i-n-g?

A Yes.

Q He was never hired by Allentown Mack, was he?

A No. He retired prior to that. He made these statement prior to the contract about the -

Q Back in 1989?

A Pardon me?

Q In 1989?

[p. 270] A It might have been the '86 contract, the '86 or '89. I might cross up those dates.

Q Is it possible that you crossed up the dates with Ridgick as well?

A It is also possible, not that you bring it to my attention. But they did make those statements to me.

Q Then you testified to comments by Mr. Dennis Wehr. Is that W-e-h-r?

A Yes.

Q And he was hired by Allentown Mack; correct?

A Yes, he was.

Q But he quit, is that correct?

A Yes, he did.

Q And that was on January 23rd, wasn't it?

A Thereabouts.

Q I think the date is of some importance, so I would like to refresh your recollection

MR. FLINT: Your Honor, I object to the comment of counsel that the date is of some importance.

JUDGE NATIONS: He can comment on anything he wants to. It doesn't make any difference.

BY MR. HELLER:

Q I would like to show you a document that the company provided, which purports to be its payroll [p. 271] master listing, would you please take a look at it, specifically as it follows Mr. Wehr?

A Okay, I see that.

Q Does that document indicate the date that he left the company's employment?

A To the best of my knowledge, yes.

Q And what date is that?

A It is 1/23/91.

Q And you testified to some statements made to you by Mr. Hoffman; correct?

A Yes.

Q What was his first name?

A Rusty Hoffman.

Q When were those comments made, exactly?

A In December, 1990.

Q December before Allentown Mack took over, or after?

A Yes, it was before Allentown Mack took over.

Q Approximately when in December, or the closest you can?

A I would say the middle of, the 15th, approximately.

Q It was after the interviewing process?

A I believe it was, yes.

Q So you already knew that Mr. Hoffman would be [p. 272] working for the company or not?

A I believe Mr. Hoffman was offered a job.

Q He had already accepted employment before he spoke to you?

A Yes.

Q And where did the conversation take place?

A It took place in my office.

Q Who else was present?

A Just myself and Rusty Hoffman.

Q About what time of day was it?

A I can't recall.

Q How did the conversation start?

A We were discussing - he is in the fire business, okay. He is our fire representative. With the new company that is a big part of our business, and we needed to develop that, and kind of take that fire business, and multiple what we had.

Q I am sorry to interrupt, but please keep it to how the conversation started and what was said rather than the whole -

A Well, it was a conversation. We were talking about what we are going to do and how we could develop this business, and he mentioned to me that he felt as though he would be restricted by a union shop, and he said he wouldn't work with a union shop.

[p. 273] Q And how did you respond to that?

A It was out of my control. I told him that. I told him not to worry about it.

Q Could you expand upon what you said to him, if there was anything else?

A I told him that it was exactly that, not to worry about it. It is out of my control, and leave it at that. It wouldn't be a problem one way or the other.

Q How did the subject of the union first arise during that discussion?

A He brought it up. He did not want to work in a union shop.

Q But you had been talking just about the fire business, and how you were going to expand it. How did the union figure into that?

A He mentioned it. He brought it up.

Q And you had a conversation with Ron Moore that you testified to; correct?

A That's correct.

Q When?

A That was also in December, late December. I am going to say, also approximately the 15th or so. I don't recall the actual date.

Q And you said it took place on the shop floor?

[p. 274] A That particular conversation I had with him I recall out in the unit.

Q And who else was present?

A There was nobody. It was a private conversation between Ron and myself.

Q Was John Grant in the room, I know he worked in the unit?

A There were people, more people.

Q But no one else joined in the conversation?

A No. They were doing their own thing.

Q do you know who might have been there working?

A No, I can't recall.

Q And how did that conversation start?

A Just general conversation of how things were going, and how is everything going in the shop, and things like that. Just a general conversation, which we would have frequently.

He mentioned to me that, you know, with a new company we don't need the union, and if the vote was taken right now the union would be out.

Q Isn't it true that you asked him how he felt about the union for the new company?

A No, sir. I did not. Never.

Q Did he indicate which employees would vote [p. 275] which way?

A We didn't get turned to that conversation.

MR. HELLER: May I go off the record?

JUDGE NATIONS: Off the record.

(Discussion held off-the-record.)

JUDGE NATIONS: Back on the record.

BY MR. HELLER:

Q And then you testified to a conversation with a Mr. McArthur; correct?

A Yes.

Q And he said that that occurred in 1989?

A That might have been before, also.

Q It could have been '86, could have been '89?

A Yes.

Q But Mr. McArthur was never hired by Allentown Mack?

A That is correct.

Q And then you spoke to Scott Murphy. You said he made some comments to you?

A Yes, he did.

Q And let's try and be as specific as we can as to when those comments were made?

A Like I mentioned in the testimony, it would happen almost monthly, a certain comment, and the comment would normally be that - he would normally say [p. 276] to me that he wasn't interested in union representation.

Q Did he make any comments in January of 1991?

A Yes, he did.

Q And can you pin the date down anymore?

A No, I cannot.

Q Where did the conversation take place in January of 1991?

A I would hear comments from the shop floor.

Q I am just referring to that month.

A Just in general conversation in the building. I can't recall where the specific location was.

Q Do you remember who else was present when he made a comment in January 1991?

A Not to my knowledge, no, I can't.

Q And in January 1991, what were his exact words to you?

A I can't remember the exact words, but he told me that he felt as though he wasn't getting the proper representation for his dues, and wasn't interested in union representation.

Q Are you sure that that was the conversation that was in January?

A I can't be assured it was the exact conversation.

[p. 277] Q He made different statements at different times, and he didn't say the same one every time?

A Unsolicited statements, and which I wouldn't respond to.

Q What were his exact words in February, to the best of your recollection?

A I believe in February, I can't remember the exact date, he was the individual that told me about the little black book, and how they had to pay unemployment dues, and it was a dollar a month.

Q So he didn't say in February that he didn't want the union, he just told you about the book; correct?

A Yes, that's correct.

Q And in December of 1989, what did he say about the union in December of 1990?

I am sorry.

A They were the same general comments. He expressed a disinterest in the union representation.

Q Are you sure that that is what he said in December that he expressed that, or could it have been another time?

A It was then and at other times.

Q What part of December was it that he said this?

[p. 278] A I would have to say it was in the middle of December, probably early December.

Q Where was it?

A Just in the general building.

Q He expressed dissatisfaction with his union representation at that time?

A Yes.

Q And did he also specifically say that he didn't want the union to represent him, or did he just say that he felt the dues were a waste of money, or something like that?

A He would say both of those things.

Q In December he said both?

A I can't be specific about what he said in December.

Q So he said it at some point, but you are not sure exactly?

A Yes. He would say it all the time.

Q He didn't say the same thing every time, right?

A No, he didn't say -

Q Sometimes he might have expressed dissatisfaction with the representation; correct?

A Yes.

Q Sometimes he might have expressed that he [p. 279] didn't want to pay the dues; correct?

A Yes.

Q And sometimes he might have said he didn't want the union at all; correct?

A Right.

Q Sometimes he told you about the black book; right?

A One time.

Q But you don't know which he said in which month; right?

A He said the black book was in February or March.

Q And other than the comments by Scott Murphy which happened a lot, the other ones that you were talking about, all occurred before Allentown Mack started operating; correct?

A Yes.

[p. 298] Q You testified about a conversation that you had with Dennis Wehr, am I correct that this was at the very time or just after you handed him the letter saying that there was going to be a change in ownership at Mack?

A Yes, it was I read the letter.

Q Just after you read it?

A Yes.

Q From Mr. Hoffman, you stated that this was in December, 1990, prior to the change in ownership, but he had already been hired by Allentown Mack?

A Yes.

Q The change in ownership was December 21st. Can you estimate how long prior to that?

A I think I testified approximately the middle of the month, the 15th. I know that it was December when he was hired, but I don't know the exact date.

Q Approximately the 15th of December. Do you think that it was less than a week before the transfer of ownership?

A I think that it was a little more than a [p. 299] week.

[p. 304] DAVID WAYNE WORTH was called as a witness, and having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. FLINT:

Q Mr. Worth, would you give us your full name and your business location?

A David Wayne Worth, and my business location is 1407 Bulldog Drive, Allentown Mack Sales and Services.

Q What is your position at Allentown Sales and Service?

A Service manager.

Q Prior to December 21, 1990, were you an employee of Mack Trucks, Inc.?

A Yes, I was.

[p. 305] Q As service manager, who did you have reporting to you, again under Mack Trucks, Inc.?

A Who did I have reporting to me?

Q In other words, who were you responsible for, what employees?

A Mechanics and foremen.

[p. 307] Q In December, 1990, did you or not interview people for the mechanics jobs for Allentown Mack Sales and service, Inc., and if so, would you please try to give the approximate date of those interviews?

A I would have to say, yes, I did, and I would have to say, it would have been in the first week or so of December.

Q Did this occur on more than one day?

A Yes. I believe it was on two individual [p. 308] days.

Q What did you do?

A I called them in one by one, and I interviewed them.

Q Who did you call in?

A The mechanics, and I called them in one by one. I interviewed them for a position with the new company.

Q These were mechanics employed by Mack Trucks, Inc.; is that correct?

A Yes.

Q During those interviews, did any of the individuals make any statement or comments to you concerning union representation?

A Yes, a few.

Q Were those statements made to you on a confidential basis?

A Yes, they were.

Q Can you tell the judge what those statements consisted of to the best of your recollection, the substance of those statements?

MR. WALSH: I am going to renew my initial objection to the statements on the grounds that I stated before.

JUDGE NATIONS: I will sustain it.

* * *

[p. 310] Q Mr. Worth, be specific as to who talked to you and made statements to that effect or to any effect concerning the union representation, and when this occurred?

A Again, approximately the first week in December, I interviewed Joe McKilvie for a position. He had asked me, is there going to be the union present?

At that time, I didn't know. He said, my opinion is that we would work better without one. He was against the union.

Q Did you say anything further to him about it?

A No. He gave me his opinion of how he felt, and that was basically all.

Q Did anybody else?

A Milt Solt, again, basically, it came up about [p. 311] the union, and I didn't give any answer either way as to what would happen, and said that he didn't feel comfortable with it because he felt that it was a waste of \$35 a month.

There was also Rusty Hoffman.

Q What did he say, if you recall?

A He said that he would vote out the union. He said, I would try to find another job if I have to work under the union.

Q Is there anybody else that you can recall?

A There were other people who mentioned it. Scott Murphy had mentioned it, basically, that he didn't want to work for a union.

Kermit Bloch had mentioned it.

MR. WALSH: Objection without a specification as to time and place.

JUDGE NATIONS: Would you give a time?

THE WITNESS: It was basically the same time, when I interviewed those same personnel.

BY MR. FLINT:

Q Were there any subsequent times?

A There was a conversation with Kermit, I believe, later on, that I had in the shop. He just came up to me and started talking about things. He brought up the union.

[p. 312] He was a night shift mechanic, and he said that his feelings were, and the whole night shift's feelings were that they didn't want the union, the whole night shift.

Q When was this, do you recall?

A It was after the interviews. It was approximately a week or so later, maybe two weeks later.

Q So that was sometime in the middle to later December, 1990?

A Yes.

Q This was Kermit Bloch stating as to the entire night shift?

A The entire night shift, yes.

Q How many employees are there on the night shift?

A Right now or at that time?

Q At that time?

A I believe that there were five or six.

Q Five or six?

A Yes.

Q Any other conversations or statements that you recall?

A No. Tim Frank had mentioned it at the time of the interview that he didn't feel that he wanted to [p. 313] work with the union now, or that he would rather not have the union there.

Q This was the same earlier period when you interviewed the employees?

A Right.

Q Altogether, do you recall how many employees you interviewed?

A I interviewed every one of the mechanics at that time.

Q So that would have been approximately how many?

A Approximately 31, I believe. It was 31 because two of them, I believe were out on compensation at that time.

Q During your interviews, did you at any time solicit or request the people who were interviewing to indicate whether they favored a union or didn't?

A Did I request that?

Q Yes.

A No.

Q Did you receive any instructions from Mr. Dwyer or anyone else with respect to that subject matter?

A No.

* * *

[p. 318] Q You referred to several comments by employees that were made during interviews; correct?

A Yes.

Q All those comments were made before these individuals had been offered jobs with the company; correct?

A I was doing their interviews, yes.

Q You didn't take everybody you interviewed; right?

A No, I did not.

Q Did any employees say that they wanted the union to continue representing them during the interviews?

A I didn't bring it up, and a lot of them didn't bring it up. The main thing that I remember that was brought up was individuals who brought up that they were against it.

Q Did some bring up that they were for it?

A I can't recall.

Q Is it possible?

A It is possible, but I just can't recall any instances where it did.

Q Did you take notes during the interviews?

A No, I did not.

Q When did you report people's comments to Mr. [p. 319] Dwyer?

A I would say, I believe it was reported after they were hired.

Q Sometime in January or February?

A I would say, after the interviews, I don't know what time. I would say that it was after the interviews were done; of course, it had to be. I am not sure about that. I would say, somewhere in January, it could be.

Q It was after Allentown Mack had started operating?

A Yes.

Q Why did you bring that subject up?

A I don't recall how it came up. I really don't recall. We were in a conversation and it just came up.

Q Did Mr. Dwyer ask you if the employees had said anything about the union?

A He may have. I don't recall how it came up, I really don't.

Q The comments that Milton Solt made, were they during the interview?

A They were during the interview.

Q How did the subject arise with Mr. Solt?

A Milt is an easy going guy, and he basically [p. 320] just brought it up in the conversation, is there going to be union here. I said, I am not sure. I am interviewing you for a position to work here. You have to understand him, he is a little backwards in a way, and he just gave his opinion on it.

Q Which was what?

A Which was basically that he -

Q I apologize for interrupting you, but I want you to use his exact words to the best of your recollection, and not an impression.

A He said he didn't need a union, and he thought that it was a waste of \$35 a month.

* * *

[p. 324] JUDGE NATIONS: Do you recall exactly when Scott Murphy made the statement to you?

THE WITNESS: That was after the new company took over, I believe.

JUDGE NATIONS: So it wasn't during the interview?

THE WITNESS: I am not sure. I am not sure when he exactly made the statement. I just recall the statements.

JUDGE NATIONS: You are sure that those are [p. 325] his exact words?

THE WITNESS: No, I am not sure that those were his exact words.

JUDGE NATIONS: Kermit Bloch, that was a week or two after the interview?

THE WITNESS: I believe so, yes.

* * *

[p. 328] Q You mentioned a conversation with an employee named Jim Frank.

A Yes. I remember talking to him, yes. He was talking about daily business, and he ventured something about he didn't need one, or something like that.

Q When was that conversation?

A I can't recall. It is very vague. I know of the conversation, but at the time I didn't think anything of it, if you know what I mean.

Q Do you know if it was this year or last year?

[p. 329] A Again, I can't recall.

* * *

JAMES HAMERSHOCK

was called as a witness and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. FLINT:

Q Would you give your name, your position, and your business address for the record please?

A James F. Hamershock, Allentown Mack Sales and Service, parts manager, 77844 -

Q As best you can remember?

A I will tell you what, I am a little nervous, guys. It is Bulldog Drive, Allentown, Pa.

Q That is good enough. I think we all know where it is.

* * *

[p. 331] Q During that time, did there come a time when you were asked by Mr. Dwyer or someone to interview prospective applicants for employment at Allentown Mack Sales and Service?

A Yes, I was.

Q Did you do so?

A Yes, sir.

Q Would you describe about when those interviews took place, and what your procedure was?

A Those took place, I believe, during the first week in December.

My procedure, after talking to Mr. Dwyer, was to set a guideline of what the pay scale would be, what the benefits would be. From that point, I randomly chose

employees of the Allentown Branch, and held an interview with them.

I explained what was going to happen, that it would be a new company. I explained to them what the possible pay rate would be. I didn't give anybody any -

How can I say this. I didn't mislead anybody into telling them that I was going to hire them. I was in there interviewing them, asking them questions, [p. 332] getting some feed back from them.

Q Do you recall how many Mack Truck employees you interviewed?

A Seven.

Q During the course of those interviews, were you told anything by an of those employees as to their desire with respect to union representation?

A Yes.

Q Was that told to you in confidence?

A Basically, I believe so. I would have to say, yes.

Q Can you describe more specifically the individuals and the times that those conversations took place?

MR. WALSH: I just want to renew my general hearsay objection again, for the record, on the same grounds as the objection I made when Mr. Dwyer testified about this.

JUDGE NATIONS: Overruled.

THE WITNESS: Could you repeat the question?

BY MR. FLINT:

Q Can you be more specific as to the individuals who told you that they had some comment about union representation?

A During the course of the interviews, I [p. 333] believe I started off with Dennis Wehr. He was the first person I interviewed, and he made the comment to me, what about the union. I said: That is up to you people. At this point in time, I have no idea.

Q Did he say anything further about that subject?

A No. He more or less dropped it at that point.

I also interviewed Mike Ridgick. Here again, those questions were always directed at me: What about the union? At that point, I could virtually say nothing because I didn't know what was going to happen. Mike told me that as long as we would treat them right, there really would be no need for a union.

Q Did he say anything further about that subject?

A No.

Q We are talking about the first week in December when these interviews took place.

A Yes.

Q Did you do this all in one day, or more than one day?

A It was one day for the first interview, and then I re-interviewed telling certain people that this is what we are going to do.

Q What you are describing took place at the [p. 334] first interview?

A Yes.

I also recall interviewing Dave Baker, and Dave sat back and slouched back and said: What are you going to do about the union?

Here again I said: This is totally up to the people, I don't know.

He said: That is good because as far as I am concerned, I have no use for it.

After that, I believe I interviewed Dennis Marsh, and Dennis more or less gave me the comment that he wasn't being represented for the \$35, if I remember the way he phrased it, he wasn't being represented for the \$35 he was paying.

Q Again, did you make any response to that?

A None, none at all.

Q Did anybody else say anything about the union one way or the other?

A Here again, Randy Zoltack, at the time, he was not initially hired, he was hired in February sometime. I had brought him in because we were in need of another person because one person had resigned. I interviewed him, and he made the comment that it was a waste of \$35 because he did confront me about the union again.

[p. 335] MR. WALSH: I have to object as to relevance because it is after the poll was taken. It has no relevance to the time period.

BY MR. FLINT:

Q Do you remember the date in February?

A I believe I interviewed him at the end of January from what I recall.

MR. FLINT: Excuse me, Your Honor, may I have a moment?

JUDGE NATIONS: Let's go off the record.

(Discussion was held off the record.)

JUDGE NATIONS: Let's go back on the record.

BY MR. FLINT:

Q To the best of your recollection, that took place at the end of January, before the poll?

A From what I can remember, yes.

Q You said that you interviewed seven Mack Truck parts employees, I take it?

A Correct.

Q Of those seven, how many were hired?

A The seven.

Q Not all of those seven individuals made comments about the union; is that correct?

A That is correct.

Q You hired all seven?

[p. 336] A Yes, sir.

Q Did you report these comments, or these remarks to Mr. Dwyer?

A I believe I did, yes.

Q Do you remember when you did that?

A I would believe towards the end of that week, and the first of the week.

Q You are talking about the first week in December?

A Yes, sir.

* * *

[p. 344] MICHAEL WALSH, was recalled as a witness in rebuttal and, having been previously duly sworn, was examined and testified further as follows:

REBUTTAL DIRECT EXAMINATION

BY MR. HELLER

Q Between the time that you learned that Mack Trucks, Inc., selling that facility in Allentown, did you have any meetings with members of the bargaining unit?

A We had a meeting on 8/26, I think it was, when we first got the early notice, and then it was postponed a couple of times. Then we had a meeting on 12/16/90 where we presented the company's proposal for [p. 345] the close down agreement.

Q Did the topic of union dues arise at either of those meetings?

A After we presented the company's proposal, and the members voted on it -

Q Are you referring to the 12/16 meeting?

A Correct.

Q Where was that meeting held?

A At the Days Inn, which is right down the street.

Q About how many individuals were present?

A Around 29 or 30.

We presented the company's offer, and they voted on it. When that was over, I explained to them that they had several options in regard to union dues, and one of those options was that they could take an honorary withdrawal card, which cost you a dollar, and that freezes your membership indefinitely.

The second option was that they could continue to pay a dollar a month, which keeps you as a member. The only difference between the two -

We could not charge them full dues. We felt that they were not covered under collective bargaining agreement, and we were negotiating rates of pay or any of the effects of a collective bargaining agreement, so [p. 346] there was no way that we could charge them full dues. We gave them those two options, take the withdrawal card, or continue to pay the dollar a month.

Q Would you indicate what would happen if the union again represented the employees of that facility?

A In regard to the dues?

Q In regard to the dues or initiation fees?

A If the union represented the employees again, with the dollar, you would just pay dues starting with the

first month. With the honorary withdrawal card, it would cost you \$10 to be reinstated.

(The documents referred to above were marked General Counsel's Exhibits No. 12 through 16 for identification.)

BY MR. HELLER:

Q I just handed you a series of five photocopies of cards, could you identify them please?

A Yes. These are copies of the authorization cards that I passed out and the members filled out that day, 12/16/90.

Q Did you ever see them after you passed them out?

A The cards?

[p. 347] Q Yes.

A When I collected them after they filled them out.

Q Can you read the names of the individuals whose cards I have just given you?

A Sure. We have Dennis Wehr, Ronald Mohr, Milton B. Solt, Randall N. Zoltack, and Joe McKilvie.

MR. HELLER: I have no further questions.

JUDGE NATIONS: Do you have any questions, Mr. Walsh?

MR. WALSH: Yes.

REBUTTAL CROSS-EXAMINATION

BY MR. WALSH:

Q Approximately how many employees were at that meeting?

A I believe there were 29 or 30.

Q Do you know, out of those 29 or 30 how many employees signed cards?

A I believe I collected 25.

* * *

[p. 352] MICHAEL RIDGICK, was called as a witness in rebuttal and, having been previously duly sworn, was examined and testified further as follows:

REBUTTAL DIRECT EXAMINATION

BY MR. HELLER

Q State your name please?

A Michael Ridgick.

Q You were a long time parts employee and assistant parts manager for Mack Trucks as you testified yesterday?

* * *

[p. 353] Q Then you were interviewed for employment with Allentown Mack; correct?

A Yes.

Q With Mr. Hamershock?

A Yes, he brought me in to talk to me, but I talked to Mr. Dwyer before that.

Q But you then had a conversation with Mr. Hamershock?

A Yes.

Q Where was the conversation?

A In the parts manager's office.

Q Was anyone else present?

A No.

Q Do you remember about when it was?

A I think Jimmy came there the last week before we closed, so the week of the 21st of December, somewhere in there. It was before that, he was there the first week.

Q Could you please describe your discussion [p. 354] with Mr. Hamerstock?

A He called me in, and he sat me down and he told me that he understands that I am going to stay on with him. I said: Yes.

He more or less said that he was going to be using me probably at the back counter because he had Dave Baker up at the front counter.

I said: I have no problems with that. I worked with the mechanics before. Everything was fine, and I said: What are the wages? He told me. He said: There won't be any union. I said to him: As long as you treat the people

right, you won't need a union; or I said, you won't need the union if you treat the people right. I said one of them things, but I don't know which one I said.

* * *

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D. C. 20543

March 3, 1997

Mr. Earle K. Shawe
Shawe & Rosenthal
20 South Charles Street
Baltimore, MD 21201

Re: Allentown Mack Sales and Service, Inc. v.
National Labor Relations Board No. 96-795

Dear Mr. Shawe:

The Court today entered the following order in the
above entitled case:

The petition for a writ of certiorari is granted.

Sincerely,

/s/ William K. Suter
William K. Suter, Clerk
